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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Retention by Broadcasters of
Program Recordings

MB Docket No. 04-232

To: Marlene H. Dortch, Secretary
Office of the Secretary

COMMENTS OF EDUCATIONAL MEDIA FOUNDATION

Educational Media Foundation ("EMF"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits its comments in response to the *Notice of Proposed Rulemaking* in the above captioned proceeding, released July 7, 2004 (the "*NPRM*").

EMF is the licensee of noncommercial educational radio broadcast and FM translator stations, which broadcast educational programming, including religious and family-oriented programming and contemporary Christian music, as part of either the K-LOVE Radio Network or the Air-1 Radio Network. In this proceeding, the Commission seeks comment on its proposal to require all broadcasters to retain for a specified time a recording of all of their programming aired between 6 a.m. and 10 p.m. in order to ensure that the Commission has the benefit of a complete record in the event that a program is the subject of an obscenity, indecency or profanity complaint. In EMF's view, such an onerous requirement should not be imposed on noncommercial educational broadcast stations, which are often underfunded and are rarely the subject of such complaints. Should the Commission nevertheless decide to mandate the taping of broadcasts by noncommercial stations, however, this burden should not be imposed on noncommercial satellite stations, which rebroadcast the programming of a primary station.

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DISCUSSION

The Commission's mandatory recording and retention proposal is overbroad in its reach. According to the Commission, the main impetus for its proposal is its desire to "increase the effectiveness of [its] process for enforcing restrictions on obscene, indecent, and profane broadcast programming." *NPRM* at ¶ 1. Noncommercial stations, however, are rarely the target of complaints regarding such programming.^{1/} Moreover, the likelihood of a religious broadcaster such as EMF airing any program that violates these restrictions is virtually nonexistent. Noncommercial stations consistently air quality educational and informational programming without commercial support and often with severely limited operating budgets. The Commission's taping proposal, however, will impose substantial costs on these stations for computer equipment and software packages, archiving and storage as well as in the form of employee time devoted to operating, monitoring and maintaining the taping equipment. As the Commission itself has noted, "whenever the Commission adopts rules, it must consider whether the benefit of such rules outweighs the burden on regulated entities." *Implementation of Section 273 of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, 30 CR 399, ¶ 8 (2003); *see also Improvements to UHF Television Reception*, 90 FCC 2d 1121, ¶ 19

^{1/} The Commission also seeks comment on the possibility of requiring 24-hour recording of programming as an aid to its enforcement of other types of complaints regarding content, such as its children's television commercial limits and sponsorship identification requirements. While noncommercial stations are subject to the Commission's underwriting rules prohibiting the airing of commercials, there is no evidence that this is an area of significant abuse. *See, e.g., Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, 86 FCC 2d 141, ¶ 2 (1981) (noting that the record "provides scant support for the contention that there has been a pattern of significant abuse" of the ban on advertising by noncommercial operators) (subsequent history omitted). Moreover, it has never been suggested that the Commission has an enforcement problem in this area or any inability to document such violations. In fact, such cases often contain lengthy transcripts of offending broadcasts.

(1982) (noting, “We have carefully weighed the benefits to the public to be derived from the proposed regulation relative to the burden of additional government oversight and find that at the present time institution of the proposed regulation cannot be justified.”); *Public Notice of Intent to Sell Broadcast Station*, 43 RR 2d 1, ¶ 18 (1978) (noting that “The Commission supports the proposition that it is important to facilitate the growth in minority ownership, but the means chosen must be those which would be effective and would not be unduly burdensome.”). In this case, not only is the imposition of a taping requirement on noncommercial educational stations completely unnecessary and unjustifiable, but the severe financial burden that would be inflicted upon such stations, which largely rely on viewer and listener donations and public funding, vastly outweighs any negligible enforcement benefit.

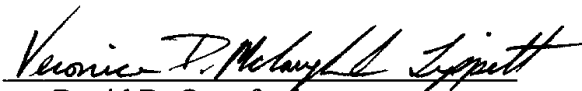
Nevertheless, in the event that the Commission decides to impose a taping and retention requirement on noncommercial broadcasters, it should specifically exempt noncommercial satellite stations. The Commission commonly permits noncommercial radio licensees, both those broadcasting NPR programming and others, to rebroadcast their programming on a number of commonly-owned satellite stations in order to provide coverage to a broad geographic area. *See, e.g., Letter to Jeffrey D. Southmayd, Esq.*, 2002 FCC LEXIS 6524 (rel. Dec. 10, 2002), *Board of Regents, State of Florida, Acting for and on behalf of the University of Florida*, 9 FCC Rcd 4049 (1994), *Board of Visitors of James Madison University*, 8 FCC Rcd 1751 (1993), *Sound of Life, Inc.*, 4 FCC 2d 8273 (1989); *see also Nebraska Educational Television Commission*, 4 RR 2d 771 (1956). To saddle each and every one of these satellite stations with

the burden of creating and storing numerous duplicative recordings would be a needless waste of limited resources.^{2/}

For the foregoing reasons, EMF urges the Commission to exempt noncommercial educational broadcasters from any mandatory recording and retention rule that it adopts or, at least, to exempt noncommercial satellite stations from any such rule.

Respectfully submitted,

EDUCATIONAL MEDIA FOUNDATION

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Dated: August 27, 2004

^{2/} To the extent that some satellite stations make insertions of local programming, they could be required to record and archive this material (except, of course, for nonprogram material such as Emergency Alert System alerts).